PUBLIC HEALTH, WELFARE & SAFETY
Exhibit No. 4
Date 2-16-2009
Bill No. SB 432

MHA AN ASSOCIATION OF MONTANA HEALTH CARE PROVIDERS

Please Support SB 432

History behind SB 432

- The history behind this bill dates back to 2003 when several health care providers were facing a crisis due to the lack of affordable, available medical liability insurance in Montana. Some insurers were pulling out of the state, while some health care provider premiums were rising in excess of 500% despite having no claims history during the preceding year.

- At the request of hospitals, physicians and insurers, the Legislature enacted SJR 32 to study the issue. A special interim legislative committee was created by the Legislative Council to recommend remedies for consideration during the 2005 Legislative Session.

- During the 2005 Session, the Legislature enacted a package of bills which received broad support.

  One of those bills – HB 26 – modified Montana's ostensible agency statute. It was revised slightly in 2007 to cover a loophole in the law (second sentence in subsection 3). SB 432 simply seeks to cover yet another loophole that was an unintended consequence of how the law was being implemented.

Ostensible agency

- Under Montana law, an agency relationship is either actual (employee) or ostensible. A person working in a hospital, who is employed by the hospital, is an agent of the hospital and the hospital is responsible for that agent's acts.

  Prior to the enactment of HB 26 in 2005, an agent could be an ostensible agent under a Montana Supreme Court decision if the patient (now the plaintiff) did not know that the person rendering the medical care was not an employee of the hospital and assumed that person was the hospital's agent.

  The purpose of HB 26 was to clarify that a hospital is responsible only for the acts of employees and not for the acts of an ostensible agent.

- The 2005 mandate in the law simply stated that the "health care provider, by policy or practice, ensured that those persons providing independent professional services have insurance of a type and in the amount..."

- The only change in the 2007 legislation was that the coverage period must mirror the time period for which a medical malpractice action must be brought under state law. The justification for this change came from some medical malpractice claims where there apparently was not tail coverage by the independent physician for the statutory period set forth in 27-2-205.

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SB 432

- Despite best efforts of hospitals to adopt and implement policies consistent with the spirit and intent of HB 26, some independent physicians are refusing to purchase "tail coverage" when they not longer have privileges at the hospital, whether through retirement or they leave the community.

- This leaves the hospital holding the proverbial liability bag, despite the legislative intent behind 28-10-103.

- SB 432 simply provides that failure of an independent physician to comply with a policy of practice implementing the required procurement of tail coverage constitutes unprofessional conduct by the Board of Medical Examiners.